

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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HUBERT W. DRAW, JR.,

Petitioner,

v.

ISIDRO BACA, *et al.*,

Respondents.

Case No. 3:15-cv-00224-MMD-WGC

ORDER

In this habeas corpus action, the petitioner, Hubert W. Draw, Jr., is due to make an election regarding an unexhausted claim in his petition — Claim 6e — by November 7, 2016. See Order entered September 21, 2016 (ECF No. 32). Draw must either abandon Claim 6e or have his entire action dismissed, nominally "without prejudice," pursuant to *Rose v. Lundy*, 455 U.S. 509 (1982).

On November 1, 2016, Draw filed a motion for extension of time (ECF No. 33), requesting an extension of the time for him to make the election regarding Claim 6e. The Court finds that the motion for extension of time is made in good faith and not solely for the purpose of delay, and there is good cause for the extension of time requested. The Court will grant Draw's motion for extension of time.


The Court reminds Draw that Claim 6e is his unexhausted claim that his federal constitutional rights were violated, on account of ineffective assistance of his appellate counsel, because his appellate counsel failed to assert claims of prosecutorial misconduct for witness tampering and other misconduct, and claims of civil rights

1 violations. See Petition for Writ of Habeas Corpus (ECF No. 6 at 35-37). If Draw does not
2 file a notice abandoning Claim 6e within the time allowed, his entire action will be
3 dismissed pursuant to *Rose*. The dismissal would be "without prejudice;" however, if this
4 action is dismissed, even "without prejudice," it would be unlikely that Draw would ever
5 be able to initiate a new federal habeas petition, because of the operation of the statute
6 of limitations.

7 The Court will not be inclined to further extend the due date for Draw's notice of
8 abandonment of Claim 6e.

9 It is therefore ordered that petitioner's Motion for Enlargement of Time (ECF No.
10 33) is granted. Petitioner will have until and including December 23, 2016, to file a notice
11 of abandonment of Claim 6e.

12 DATED THIS 1st day of November 2016.

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16 MIRANDA M. DU
17 UNITED STATES DISTRICT JUDGE
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